

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

DAVID JOHNSTON,

Defendants.

Civil Action No. 16-10607-NMG

ORAL ARGUMENT REQUESTED

**DEFENDANT DAVID JOHNSTON’S RENEWED RULE 50(a) MOTION
FOR JUDGMENT AS A MATTER OF LAW**

Defendant David Johnston moves for judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50(a) on all of the claims asserted by Plaintiff Securities Exchange Commission (“SEC”). For the reasons explained in the accompanying Memorandum, the court should enter judgment for the defendant because the SEC has failed to establish three essential elements of its claims: (1) that Mr. Johnston had a duty to disclose the allegedly omitted information, (2) that he or AVEO made material misstatements, and (3) that he acted with requisite culpability.

Dated: November 17, 2018

Respectfully submitted,

DAVID B. JOHNSTON

By his attorneys,

/s/ John F. Sylvia

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LOCAL RULE 7.1(a)(2) CERTIFICATION

I certify that counsel for Defendant has conferred with counsel for Plaintiff in a good faith attempt to resolve or narrow the issues raised by this motion.

/s/ John F. Sylvia

John F. Sylvia

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on November 17, 2018.

/s/ John F. Sylvia

John F. Sylvia